

REMARKS/ARGUMENTS

Claims 1-4, 6-13, 15, 16, 18, 20-23, 26-30, 41-45 and 48-50 remain pending in the instant application. Claims 1 and 48 have presently been amended. Support for the amendments to claims 1 and 48 may be found throughout the specification as originally filed, including, *e.g.*, Figures 23-25 and 27 and page 23, lines 17-19, respectively. Claims 13, 16, 22, 23, 25, 27-30 and 41-45 have previously been withdrawn. Claim 25 has presently been canceled. Claims 5, 14, 17, 19, 24, 31-40, 46 and 47 have previously been canceled. New claims 51 and 52 are now presented.

1. Rejection of Claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 Under 35 U.S.C. 102(e)

Claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 stand rejected under 35 U.S.C. 103 as being unpatentable over Michelson et al. (U.S. Pat. No. 6,890,355) in view of Brantigan (U.S. Patent No. 5,192,327).

With respect to claim 1, the Examiner indicates that Michelson teaches a metal vertebral body replacement comprising a body 300, nonparallel top and bottom surfaces having a plurality of through holes and continuous grooves 314 and protrusions, a planar growth hole face 310 and a curved growth hole face 312 having four through holes 319 and a curved anterior face 304. The Examiner states that Michelson fails to disclose a groove on the top surface that extends through the anterior and posterior faces. The Examiner indicates that Brantigan teaches a spinal implant comprising a body having a top surface with projections and grooves that extend generally along the top though the anterior and poster faces in the same filed of endeavor for the purpose of securing the implant to the implant site.

Applicant respectfully submits that Michelson and Brantigan, either alone or in combination with one another, fail to teach or suggest every feature of amended claim 1. Specifically, Michelson and Brantigan fail to disclose both serrations and at least one elongated groove in the top of the body that extends through the anterior face and the posterior face of the body in which teeth forming the serrations providing

openings generally orthogonal to the at least one elongated groove. In other words, the teeth form openings which extend across the implant (similar to Michelson or Brantigan) and there is at least one groove generally orthogonal to the openings of the teeth (Neither Michelson nor Brantigan provide one or more grooves of this type.) As clearly shown in, e.g., Figures 23-25 and 27 of the instant application, groove 160 in the top 116 of the body 112 extends all the way through both the anterior face 113 and the posterior face 114 as well as the serrations 134.

Applicant believes claim 1 is allowable, at least, for this reason.

Applicant believes claims 2, 4, 6-10, 15, 18, 20 and 48-50 are allowable, at least, because they depend from claim 1.

Claim 48, as amended in independent form, is believed to be allowable for additional reasons. Specifically, Applicant respectfully submits that Michelson and Brantigan fail to teach or suggest at least one groove of the bottom being intersected by a plane parallel to the planar growth hole face and none of the at least one groove of the top being intersected by that same plane. As shown in Figure 14 of Michelson, any plane parallel to the planar interior side 310' that intersects an opening 314' on the bottom of the member 300' will also intersect an opening 314' on the top 306' of the member 300'. This is due to the fact that the openings 314' in the top 306' of the member 300' are the mirror image of the openings 314' in the bottom of the member 300'. Each of the openings 314' in the top 306' of the member 300 are identical in shape to and aligned with corresponding openings 314' in the bottom of the member 300'. To the contrary, the presently claimed vertebral body replacement may include grooves in the top that are not identical to or aligned with the grooves on the bottom. For example, the bottom might include three grooves while the top may include only two grooves. In such a configuration, a plane parallel to the planar hole growth face that intersects the extra groove in the bottom will not intersect one of the two grooves on the top. Accordingly, Applicant respectfully submits that Michelson and Brantigan fail to disclose the feature recited in claim 48.

New claim 51 includes the limitations of claim 1, and further recites that the at least one elongated groove extends generally through at least two of the plurality of serrations, along the top, and through the anterior face. New claim 52 includes the

limitations of claim 1, and further recites that the at least one elongated groove is sized for engagement with a channel insertion tool. Applicant believes claims 51 and 52 are allowable, at least, because each depends from claim 1.

2. Rejection of Claim 21 under 35 U.S.C. 103(a)

Claim 21 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Brantigan as applied to claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 above and further in view of Paul et al. (U.S. Pat. No. 6,143,033).

Applicant believes claim 21 is allowable, at least, because it depends from claim 1 and because Paul fails to disclose that which is missing from Michelson and Brantigan as discussed in Section 1 above.

3. Rejection of Claim 26 under 35 U.S.C. 103(a)

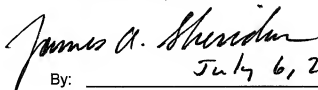
Claim 26 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Brantigan as applied to claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 above and further in view of Wagner et al. (U.S. Pat. No. 5,306,309).

Applicant believes claim 26 is allowable, at least, because it depends from claim 1 and because Wagner fails to disclose that which is missing from Michelson and Brantigan as discussed in Section 1 above.

4. Conclusion

In light of the amendments and remarks provided herein, applicants respectfully request the issuance of a Notice of Allowance.

Respectfully submitted,
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